

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MASSACHUSETTS DEVELOPMENT)
FINANCE AGENCY)
Plaintiff,)
)
v.) C.A. No. 04 CV 10203 PBS
)
ADP MARSHALL, INC., a FLUOR)
DANIEL COMPANY, and FIREMAN'S)
FUND INSURANCE COMPANY)
Defendants.)

)
ADP MARSHALL, INC.)
Plaintiff-in-Counterclaim,)
)
v.)
)
MASSACHUSETTS DEVELOPMENT)
FINANCE AGENCY)
Defendant-in-Counterclaim.)

)
ADP MARSHALL, INC.)
Third Party Plaintiff,)
)
v.)
)
ALLIED CONSULTING ENGINEERING)
SERVICES, INC., ANDOVER CONTROLS)
CORPORATION, R&R WINDOW)
CONTRACTORS, INC., and DELTA)
KEYSPAN, INC. n/k/a DELTA)
KEYSPAN, LLC et al.)
Third Party Defendants.)

**ADP MARSHALL, INC.'S OBJECTIONS TO SPAGNOLO/GISNESS &
ASSOCIATES, INC.'S PRETRIAL DISCLOSURES**

In accordance with this Honorable Court's Scheduling Order dated April 11, 2005 and in accordance with Fed.R.Civ.P. 26(a)(3), Defendant/Plaintiff-in-Counterclaim, ADP Marshall, Inc.

(hereinafter “ADPM”) hereby objects to Spagnolo/Gisness & Associates, Inc.’s (“Spagnolo/Gisness”) Pre-trial disclosures for the following reasons.

Spagnolo/Gisness fails to set forth any documentary evidence it intends to introduce at trial other than the architectural drawings dated December 27, 2000. Spagnolo/Gisness asserts a full reservation of rights with respect to its Pre-trial disclosures based upon ADPM’s alleged failure to “provide any meaningful discovery regarding the likely proof to be forthcoming at trial.” Contrary to Spagnolo/Gisness’ assertion concerning discovery, ADPM’s Initial Disclosures dated January 10, 2005 set forth a comprehensive list of witnesses likely to have discoverable information relating to this matter. ADPM’s intended trial witnesses were disclosed in this listing.

Also, in compliance with this Court’s Scheduling Order and as set forth in ADPM’s Initial Disclosures, ADPM made available all of its documents relating to this matter for inspection and copying, but no party to this proceeding, including Spagnolo/Gisness, called upon ADPM’s counsel to view same. As to damages, ADPM set forth its known damages vis-à-vis the plaintiff. As to the third party defendants, ADPM is seeking indemnification and/or contribution, which cannot be quantified, such damages being unknown until a verdict is rendered. Defense costs (attorney fees and costs) are continuously being accrued. Spagnolo/Gisness has not requested an accounting of same.

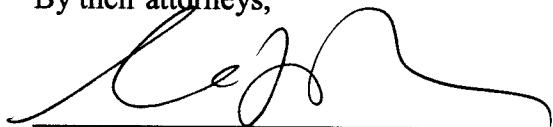
Spagnolo/Gisness failed to view ADPM’s documents, made available to all parties for inspection pursuant to this Court’s Order. Spagnolo/Gisness failed to notice any depositions or follow up on outstanding discovery requests to ADPM. All of the information regarding witnesses and damages, available to ADPM, was provided to Spagnolo/Gisness through ADPM’s initial disclosures. Spagnolo/Gisness’ has not suffered any harm as a result of ADPM’s

alleged failure to "provide meaningful discovery." The truth of the matter is Spagnolo/Gisness failed to take a proactive approach to discovery and now claims to be prejudiced in some way by its own inaction.

Further, ADPM has made detailed Pre-trial disclosures which list all intended and possible witnesses and those documents to be utilized by ADPM at trial. Spagnolo/Gisness has attempted to avoid this required Pre-trial disclosure by asserted a lack of "meaningful discovery" by ADPM. As set forth *supra*, Spagnolo/Gisness' reservation is without basis. Spagnolo/Gisness should be limited to the use of those witnesses and documents specifically identified in its Pre-Trial disclosures.

Respectfully submitted,

DEFENDANTS/THIRD PARTY PLAINTFF,
ADP Marshall, Inc.
By their attorneys,



Andrew J. Tine (BBO#633639)
Haese, LLC
30 Federal Street, 3rd Floor
Boston, MA 02110
(617) 428-0266 – Telephone
(617) 428-0276 - Fax

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing via United States Mail postage prepaid this 7th day of July, 2005 to the following:

Edward F. Vena, Esq.
Vena, Riley, Deptula, LLP
250 Summer Street, 2nd Floor
Boston, MA 02210

John J. McNamara, Esq.
Domestico, Lane & McNamara, LLP
161 Worcester Road
Frammingham, MA 01701

Allen Whitestone, Esq.
Black, Cetkovic & Whitestone
200 Berkeley Street
Boston, MA 02108

John H. Bruno, Esq.
Masi & Bruno
124 Long Pond Street
Plymouth, MA 02360

William E. O'Gara, Esq.
Holland & Knight
One Financial Plaza
Providence, RI 02903

Eric H. Loeffler, Esq.
Cetrulo & Capone, LLP
Two Seaport Lane
10th Floor
Boston, MA 02210

Jay S. Gregory, Esq.
Warren Hutchison, Esq.
Donovan Hatem, LLP
Two Seaport Lane
Boston, MA 02210

